

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

H.B. 992
Apr 17, 2013
HOUSE PRINCIPAL CLERK

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HOUSE DRH30462-MLa-97B (02/27)

Short Title: Phoebe's Law.

(Public)

Sponsors: Representatives Murry, Horn, Whitmire, and Glazier (Primary Sponsors).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO ESTABLISH A PILOT PROGRAM TO IMPROVE PUBLIC SAFETY BY
3 AUTHORIZING THE USE OF ELECTRONIC SPEED-MEASURING SYSTEMS BY
4 THE DEPARTMENT OF TRANSPORTATION TO DETECT SPEED LIMIT
5 VIOLATIONS IN HIGHWAY WORK AND SCHOOL ZONES, TO ESTABLISH
6 STANDARDS FOR THE APPROVAL, USE, AND CALIBRATION OF ELECTRONIC
7 SPEED-MEASURING SYSTEMS, TO ESTABLISH A CIVIL PENALTY FOR SPEED
8 VIOLATIONS IN WORK AND SCHOOL ZONES THAT ARE DETECTED BY THOSE
9 SYSTEMS, TO CREATE A NEW SPECIAL FUND WITHIN THE STATE CIVIL
10 PENALTY AND FORFEITURE FUND, TO PROVIDE FOR THE PAYMENT OF THE
11 PENALTIES INTO THE DESIGNATED SPECIAL FUND, AND TO DECREASE THE
12 AMOUNT OF HIGHWAY FUNDS TRANSFERRED TO THE DEPARTMENT OF
13 PUBLIC INSTRUCTION FOR DRIVERS EDUCATION.

14 The General Assembly of North Carolina enacts:

15 **SECTION 1.** Chapter 20 of the General Statutes is amended by adding a new
16 section to read:

17 **"§ 20-141.7. Use of electronic speed-measuring systems to detect speed limit violations in**
18 **work and school zones.**

19 (a) Authorization. – Electronic speed-measuring systems may be used to detect
20 violations of the speed limit set by G.S. 20-141(j2) for highway work zones and violations of
21 the speed limit set by G.S. 20-141.1 for State-maintained highways in school zones.

22 (b) Definition. – As used in this section, an electronic speed-measuring system is a
23 mobile or fixed device (i) consisting of an automated traffic camera and sensor and (ii) capable
24 of measuring the speed and producing one or more digital photographs of a motor vehicle
25 violating a speed limit set by G.S. 20-141(j2) or G.S. 20-141.1.

26 (c) Minimum Standards. – An electronic speed-measuring system authorized for use by
27 this section shall produce at least one photograph that clearly shows a recorded image of the
28 vehicle speeding; the vehicle registration number and state of issuance; the date, time, and
29 location of the violation; and the recorded speed.

30 (d) Signage. – The Department of Transportation shall provide notice of the presence of
31 an electronic speed-measuring system by posting a conspicuous warning sign not more than
32 1,000 feet from the location of the system. All warning signs shall be consistent with a
33 statewide standard adopted by the Department of Transportation.

34 (e) Use. – An electronic speed-measuring system authorized for use by this section
35 shall be approved by the Secretary of Transportation. No local government may operate an
36 electronic speed-measuring system.



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(f) Penalty. – Except as provided by subsection (i) of this section, a violation of a speed limit in a highway work zone established pursuant to G.S. 20-141(j2) or a speed limit on a State-maintained highway within a school zone established pursuant to G.S. 20-141.1 that is detected by an electronic speed-measuring system is a noncriminal violation for which a civil penalty shall be assessed and for which no points authorized by G.S. 20-16(c) shall be assigned to the owner or driver of the vehicle nor insurance points as authorized by G.S. 58-36-65. The civil penalty shall be two hundred fifty dollars (\$250.00) for a violation of a speed limit in a highway work zone established pursuant to G.S. 20-141(j2) or a speed limit on a State maintained highway within a school zone established pursuant to G.S. 20-141.1.

(g) Notification of Violation. – The Department of Transportation shall issue to the registered owner of a motor vehicle cited for a speeding violation detected by an electronic speed-measuring system a notice of the violation containing all of the information listed in this subsection. The notice shall be delivered by first-class United States mail at the address on the current registration of the vehicle's owner and is deemed served on the registered owner five days after the mailing. The notice of the violation shall contain all of the following:

- (1) The recorded image of the vehicle speeding.
- (2) The vehicle registration number and state of issuance.
- (3) The date, time, and location of the violation.
- (4) The recorded speed.
- (5) The process for paying the civil penalty or contesting the owner's responsibility for the violation.

(h) Liability. – The registered owner of a vehicle cited for a speeding violation detected by an electronic speed-measuring system shall be responsible for any penalty imposed under this section unless, within 30 days of service of the notification of violation, the owner provides to the Division of Motor Vehicles a sworn affidavit containing the information listed in one of the subdivisions of this subsection. If the registered owner fails to pay the civil penalty or fails to respond to the notice within 30 days of service of the notification of violation, the owner waives the right to contest responsibility for the violation and is subject to an additional civil penalty of one hundred twenty-five dollars (\$125.00).

The sworn affidavit shall contain one of the following:

- (1) The name and address of the person or persons who had or may have had actual physical control of the vehicle at the time of the violation.
- (2) A statement that at the time of the violation the vehicle was under the control of a person unknown to the owner, without the owner's permission. A statement provided under this subdivision shall be accompanied by documentation verifying that the owner reported to appropriate law enforcement officials the theft or other loss of the vehicle not later than 48 hours after the time of the violation.

(i) Notification of Criminal Charges. – If a law enforcement officer cites, pursuant to G.S. 15A-302, or arrests, pursuant to G.S. 15A-401, an owner of a vehicle in an area where an electronic speed-measuring system is in use for detecting violations of a speed limit set pursuant to G.S. 20-141(j2) or G.S. 20-141.1, then the officer shall notify the Department of Transportation within 48 hours of the citation or arrest. Upon notification, the Department shall not issue a notice of violation pursuant to subsection (g) of this section. If it is determined that a notice of violation was issued in error after proper notification, no penalty may be imposed under this section, and any penalty already paid pursuant to the notice of violation shall be refunded.

(j) Administrative Hearings. – The Division of Motor Vehicles shall establish an administrative nonjudicial hearing process to review challenges to penalties assessed pursuant to this section. The hearing shall provide a full opportunity for the person charged with the violation, if that person so requests, to present evidence and contest the violation.

(k) Appeal. – A person dissatisfied with the decision of the Division of Motor Vehicles may appeal the decision to the district court of the county in which the violation occurred by filing a notice of the appeal with the clerk of superior court in the county where the violation occurred within 30 days of notification of a final decision by the Division. An appeal under this section is for a trial de novo before the district court. An appeal under this section is a civil action, but may be heard in either a civil or criminal session of court. The Attorney General shall represent the State in the appeal unless otherwise agreed upon by the Attorney General and the district attorney in the county where the violation occurred. The district court's determination shall be based upon a preponderance of the evidence. An appeal of the district court's determination shall be to the Court of Appeals."

SECTION 2. Chapter 8 of the General Statutes is amended by adding a new section to read:

"§ 8-54.1. Results of electronic speed-measuring systems; admissibility.

(a) Admissibility. – The results of the use of an electronic speed-measuring system satisfying the requirements of subsection (b) of this section and authorized by G.S. 20-141.7 shall be admissible as prima facie evidence for the purpose of establishing the speed of the vehicle detected.

(b) Calibration and Testing. – All electronic speed-measuring systems shall be calibrated and tested at regular intervals pursuant to standards established by the Department of Transportation. A written certificate by a certified technician meeting the standards established by the Department of Transportation showing that a test was made within the required testing period and that the system was accurate shall be competent and prima facie evidence of those facts.

(c) Judicial Notice. – In every proceeding in which the results of an electronic speed-measuring system are sought to be admitted for the purpose of enforcement of G.S. 20-141.7, notice shall be taken of the rules approving the electronic speed-measuring system and the procedures for calibration or testing for accuracy of the system."

SECTION 3. Chapter 115 of the General Statutes is amended by adding a new section to read:

"§ 115C-457.4. Civil Penalty Litigation Fund.

There is established within the Civil Penalty and Forfeiture Fund a special fund entitled the Civil Penalties Litigation Fund to be administered by the Office of State Budget and Management. The Civil Penalties Litigation Fund shall include seventy-five percent (75%) of civil penalties paid pursuant to G.S. 20-141.7 and any other moneys appropriated or otherwise directed by the General Assembly. Moneys paid into the Civil Penalties Litigation Fund shall be allocated to local school administrative units on a per pupil basis, based on the student population for the current school year. The moneys in this fund shall be expended in accordance with the provisions of the State School Technology Fund pursuant to G.S. 115C-102.6D."

SECTION 4. Of the total amount collected in fines and penalties pursuant to this act, seventy-five percent (75%) shall be paid into the Civil Penalties Litigation Fund and twenty-five percent (25%) shall be paid into the State Public School Fund. The payments to the Civil Penalties Litigation Fund are intended to satisfy the judgment entered on August 8, 2008, in North Carolina School Boards Association, et al. v. Moore, et al., Wake County Superior Court, No. 98-CVS-14158. The provisions of G.S. 115C-457.2 concerning an agency's retention of the actual costs of collection of penalties and fines shall not be applicable to penalties collected pursuant to this act.

SECTION 5. The funds transferred to the State Public School Fund under this act shall be used exclusively for the Drivers Education Program. The Department of Public Instruction shall report monthly to the Department of Transportation the amount allocated under this section for the Drivers Education Program, and the Department of Transportation

1 may reduce the transfer of funds it otherwise would make to the Department of Public
2 Instruction for the Drivers Education Program pursuant to G.S. 20-88.1(c) by an equivalent
3 amount. The Department of Transportation shall use the Drivers Education Program funds that
4 otherwise would have been transferred to the Department of Public Instruction exclusively for
5 the implementation and administration of the electronic speed-measuring systems authorized
6 under this act. After consultation with the Joint Legislative Commission on Governmental
7 Operations, such funds may be used to establish positions for the administration of the
8 electronic speed-measuring systems program. Those positions may not be filled until a contract
9 has been awarded to a third-party vendor for the primary operation of the program.

10 **SECTION 6.** There is appropriated from the General Fund to the Office of State
11 Budget and Management the sum of fifty thousand dollars (\$50,000) for the 2013-2014 fiscal
12 year in nonrecurring funds. These funds shall be allocated to the Civil Penalties Litigation Fund
13 to be used for implementing the pilot program authorized by this act.

14 **SECTION 7.** For the purposes of implementing this act, the Secretary of
15 Transportation, or the Secretary's designee, may designate no more than 15 highway work
16 zones at one time, and no more than 15 school zones on State-maintained highways at one time,
17 throughout the State to pilot this program. The Secretary of Transportation, or the Secretary's
18 designee, shall ensure the designated highway work zones have a high volume of traffic and a
19 minimum of five workers scheduled to work at least 60 hours per week. An electronic
20 speed-measuring system shall not be placed in any lead-in or lead-out portion of the highway
21 work zone where workers are not engaged within one-half of one mile of the electronic
22 speed-measuring system placement.

23 **SECTION 8.** The Secretary of Transportation shall report to the Joint Legislative
24 Transportation Oversight Committee, the Joint Legislative Education Oversight Committee,
25 and the Joint Legislative Commission on Governmental Operations on the pilot program
26 authorized by this act and shall include recommendations for extension, alteration, or
27 continuance of the program. The report shall include the process and costs of purchasing
28 equipment and contracting for services necessary for implementation; the number of violations
29 detected; the number of violations appealed; the number and amount of penalties collected; the
30 amount paid into the Civil Penalties Litigation Fund; the amount paid into the State Public
31 School Fund; the effect on the number of instances of speeding in the highway work zones and
32 school zones located on State-maintained highways; the effect on the number and severity of
33 accidents in highway work zones and school zones located on State-maintained highways; the
34 cost to the Department of Transportation for operating the program; and any other matter that
35 will assist in evaluating the effectiveness of the program. The report required by this section
36 shall be made no later than May 1, 2014, and annually thereafter.

37 **SECTION 9.** This act becomes effective October 1, 2013, and applies to all civil
38 penalties assessed for speeding violations in highway work zones and school zones on
39 State-maintained highways on or after that date. This act expires October 1, 2028.